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9 **UNITED STATES DISTRICT COURT**  
 10 **FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

11 CAROL SCAVO, individually and on  
 12 behalf of all others similarly situated

13 Plaintiff,

14 vs.

15 LIFELABS, LLC; GADGETPUSH; ZR  
 16 MEDIA LLC, and DOES 1-20,  
 17 inclusive,  
 18 Defendant.  
 19  
 20  
 21

Case No. 19-3987

3987

11 CLASS ACTION

12 **COMPLAINT FOR VIOLATIONS OF:**

- 13 1. NEGLIGENT VIOLATIONS OF  
14 THE TELEPHONE CONSUMER  
15 PROTECTION ACT [47 U.S.C.  
16 §227 ET SEQ.]
- 17 2. WILLFUL VIOLATIONS OF  
18 THE TELEPHONE CONSUMER  
19 PROTECTION ACT [47 U.S.C.  
20 §227 ET SEQ.]

21 DEMAND FOR JURY TRIAL

22 **INTRODUCTION**

23 1. CAROL SCAVO ("Plaintiff") brings this Class Action Complaint  
 24 for damages, injunctive relief, and any other available legal or equitable remedies,  
 25 resulting from the illegal actions of TRUMPIA, LIFELABS, LLC,  
 26 GADGETPUSH, ZR MEDIA, LLC, and DOCIRCLE, INC. dba TEXPEDITE  
 27 ("Defendants"), in negligently and knowingly contacting Plaintiff on Plaintiff's  
 28 cellular telephone, in violation of the Telephone Consumer Protection Act, 47

1 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff  
2 alleges as follows upon personal knowledge as to himself and his own acts and  
3 experiences, and, as to all other matters, upon information and belief, including  
4 investigation conducted by his attorneys.

### 5 JURISDICTION AND VENUE

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
7 a resident of California, seeks relief on behalf of a Class, which will result in at  
8 least one class member belonging to a different state than that of Defendant,  
9 individuals residing and doing business in California. Plaintiff also seeks up to  
10 \$1,500 in damages for each call in violation of the TCPA, which, when  
11 aggregated among a proposed class number in the tens of thousands, exceeds the  
12 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a  
13 national class, which will result in at least one class member belonging to a  
14 different state than that of Defendant, providing jurisdiction under 28 U.S.C.  
15 Section 1332. Therefore, both elements of diversity jurisdiction under the Class  
16 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
17 jurisdiction.  
18

19 3. Venue is proper in the United States District Court for the Western  
20 District of Pennsylvania pursuant to 18 U.S.C. § 1391(b) and 1441(a) because  
21 Defendant is subject to personal jurisdiction in the County of Somerset, State of  
22 Pennsylvania.

### 23 PARTIES

24 4. Plaintiff CAROL SCAVO is, and at all times mentioned herein was,  
25 a citizen and resident of the State of Pennsylvania. Plaintiff is, and at all times  
26 mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

27 5. Defendant, LIFELABS, LLC (“Defendant LL” or “LL”), is a  
28 lifestyle products brand whose primary corporate address is in Florida state.

1 Defendant, are and at all times mentioned herein were, “persons,” as defined by  
2 47 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant herein Defendant  
3 conducted business in the State of Pennsylvania and within this judicial district.

4 6. Defendant, GADGETPUSH (“Defendant GP” or “GP”), is an online  
5 marketer whose primary corporate address is in Florida state. Defendant, are and  
6 at all times mentioned herein were, “persons,” as defined by 47 U.S.C. § 153  
7 (39). Plaintiff alleges that at all times relevant herein Defendant conducted  
8 business in the State of Pennsylvania and within this judicial district.

9 7. Defendant, ZR MEDIA, LLC (“Defendant ZR” or “ZR”), is an  
10 online marketing agency whose primary corporate address is in Florida state.  
11 Defendant, are and at all times mentioned herein were, “persons,” as defined by  
12 47 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant herein Defendant  
13 conducted business in the State of Pennsylvania and within this judicial district  
14

15 8. The above named Defendants, and its subsidiaries and agents, are  
16 collectively referred to as “Defendants.” The true names and capacities of the  
17 Defendants sued herein as DOE DEFENDANTS 1-20, inclusive, are currently  
18 unknown to Plaintiff, who therefore sues such Defendants by fictitious names.  
19 Each of the Defendants designated herein as a DOE is legally responsible for the  
20 unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
21 Complaint to reflect the true names and capacities of the DOE Defendants when  
22 such identities become known.

23 9. Plaintiff are informed and believe that at all relevant times, each and  
24 every Defendant was acting as an agent and/or employee of each of the other  
25 Defendants and was acting within the course and scope of said agency and/or  
26 employment with the full knowledge and consent of each of the other Defendants.  
27 Plaintiff are informed and believe that each of the acts and/or omissions  
28

1 complained of herein was made known to, and ratified by, each of the other  
2 Defendants.

### 3 FACTUAL ALLEGATIONS

4 10. On or about July of 2018, Defendants began using Plaintiff's cellular  
5 telephone for the purpose of sending Plaintiff spam advertisements and/or  
6 promotional offers, via text message, including a text message sent to and  
7 received by Plaintiff on or about July 5, 2018.

8 11. On July 5, 2018, Plaintiff received a text message from Defendants  
9 that read:

11 LifeLabs: The Greatest Step Forward in Weight Loss History.  
12 See Why Every Judge on Shark Tank Backed This Product  
13 [1ez.co/41RLLAL](http://1ez.co/41RLLAL) Txt STOP to OptOut  
14

15 12. Prior to October 30, 2012, Plaintiff had never contacted nor  
16 conducted any business with Defendants in any fashion, including having never  
17 visited any of Defendants' online websites.

18 13. The text message placed to Plaintiff's cellular telephone was placed  
19 via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. §  
20 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

21 14. The telephone number that Defendants, or its agent called was  
22 assigned to a cellular telephone service for which Plaintiff incurs a charge for  
23 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

24 15. These telephone calls constituted calls that were not for emergency  
25 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

26 16. Plaintiff was never a customer of Defendants and never provided her  
27 cellular telephone number to Defendants for any reason whatsoever.  
28 Accordingly, Plaintiff did not provide Defendants or its agents with prior express



1 consent to receive unsolicited text messages, pursuant to 47 U.S.C. § 227  
2 (b)(1)(A).

3 17. These telephone calls by Defendants, or its agents, violated 47  
4 U.S.C. § 227(b)(1).

5 **CLASS ACTION ALLEGATIONS**

6 18. Plaintiff brings this action on behalf of herself and on behalf of and  
7 all others similarly situated (“the Class”).

8 19. Plaintiff represents, and is a member of the Class, consisting of all  
9 persons within the United States who received any unsolicited text messages  
10 and/or any other unsolicited text messages from Defendants without prior express  
11 consent.

12 20. Defendants and its employees or agents are excluded from the Class.  
13 Plaintiff does not know the number of members in the Class, but believes the  
14 Class members number in the tens of thousands, if not more. Thus, this matter  
15 should be certified as a Class action to assist in the expeditious litigation of this  
16 matter.  
17

18 21. Plaintiff and members of the Class were harmed by the acts of  
19 Defendants in at least the following ways: Defendants, either directly or through  
20 its agents, illegally contacted Plaintiff and the Class members via their cellular  
21 telephones by using an unsolicited text message, thereby causing Plaintiff and the  
22 Class members to incur certain cellular telephone charges or reduced cellular  
23 telephone time for which Plaintiff and the Class members previously paid, and  
24 invading the privacy of said Plaintiff and the Class members. Plaintiff and the  
25 Class members were damaged thereby.

26 22. This suit seeks only damages and injunctive relief for recovery of  
27 economic injury on behalf of the Class, and it expressly is not intended to request  
28 any recovery for personal injury and claims related thereto. Plaintiff reserves the

1 right to expand the Class definition to seek recovery on behalf of additional  
2 persons as warranted as facts are learned in further investigation and discovery.

3 23. The joinder of the Class members is impractical and the disposition  
4 of their claims in the Class action will provide substantial benefits both to the  
5 parties and to the court. The Class can be identified through Defendant's records  
6 or Defendant's agents' records.

7 24. There is a well-defined community of interest in the questions of law  
8 and fact involved affecting the parties to be represented. The questions of law  
9 and fact to the Class predominate over questions which may affect individual  
10 Class members, including the following:

- 11 a) Whether, within the four years prior to the filing of this  
12 Complaint, Defendant placed any unsolicited text messages  
13 (other than a text message made for emergency purposes or  
14 made with the prior express consent of the called party) to a  
15 Class member using any automatic telephone dialing and/or  
16 texting system to any telephone number assigned to a  
17 cellular telephone service;  
18 b) Whether Plaintiff and the Class members were damaged  
19 thereby, and the extent of damages for such violation; and  
20 c) Whether Defendants should be enjoined from engaging in  
21 such conduct in the future.  
22

23 28. As a person that received at least one unsolicited text message  
24 without Plaintiff's prior express consent, Plaintiff is asserting claims that are  
25 typical of the Class. Plaintiff will fairly and adequately represent and protect  
26 the interests of the Class in that Plaintiff has no interests antagonistic to any  
27 member of the Class.  
28

1        29. Plaintiff and the members of the Class have all suffered irreparable  
2 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a  
3 class action, the Class will continue to face the potential for irreparable harm. In  
4 addition, these violations of law will be allowed to proceed without remedy and  
5 Defendants will likely continue such illegal conduct. Because of the size of the  
6 individual Class member's claims, few, if any, Class members could afford to  
7 seek legal redress for the wrongs complained of herein.

8        30. Plaintiff has retained counsel experienced in handling class action  
9 claims and claims involving violations of the Telephone Consumer Protection  
10 Act.

11        31. A class action is a superior method for the fair and efficient  
12 adjudication of this controversy. Class-wide damages are essential to induce  
13 Defendant to comply with federal law. The interest of Class members in  
14 individually controlling the prosecution of separate claims against Defendant is  
15 small because the maximum statutory damages in an individual action for  
16 violation of privacy are minimal. Management of these claims is likely to present  
17 significantly fewer difficulties than those presented in many class claims.

18        32. Defendants have acted on grounds generally applicable to the Class,  
19 thereby making appropriate final injunctive relief and corresponding declaratory  
20 relief with respect to the Class as a whole.

21  
22                    **FIRST CAUSE OF ACTION**  
23                    **NEGLIGENT VIOLATIONS OF THE TELEPHONE**  
24                    **CONSUMER PROTECTION ACT**  
                      **47 U.S.C. § 227 ET SEQ.**

25        33. Plaintiff incorporates by reference all of the above paragraphs of this  
26 Complaint as though fully stated herein.  
27  
28

1       34. The foregoing acts and omissions of Defendants constitute numerous  
2 and multiple negligent violations of the TCPA, including but not limited to each  
3 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

4       35. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et  
5 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory  
6 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

7       36. Plaintiff and the Class are also entitled to and seek injunctive relief  
8 prohibiting such conduct in the future.

9  
10                   **SECOND CAUSE OF ACTION**  
11                   **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**  
12                   **TELEPHONE CONSUMER PROTECTION ACT**  
13                   **47 U.S.C. § 227 ET SEQ.**

14       37. Plaintiff incorporates by reference all of the above paragraphs of this  
15 Complaint as though fully stated herein.

16       38. The foregoing acts and omissions of Defendants constitute numerous  
17 and multiple knowing and/or willful violations of the TCPA, including but not  
18 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et  
19 seq.

20       39. As a result of Defendants' knowing and/or willful violations of 47  
21 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00  
22 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
23 227(b)(3)(C).

24       40. Plaintiff and the Class are also entitled to and seek injunctive relief  
25 prohibiting such conduct in the future.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The  
3 Class members the following relief against Defendants:

4 **FIRST CAUSE OF ACTION FOR NEGLIGENT**  
5 **VIOLATIONS OF THE TCPA,**  
6 **47 U.S.C. § 227 ET SEQ.**

7 41. As a result of Defendants' negligent violations of 47 U.S.C. §  
8 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory  
9 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

10 42. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting  
11 such conduct in the future.

12 43. Any other relief the Court may deem just and proper.

13 **SECOND CAUSE OF ACTION FOR KNOWING**  
14 **AND/OR WILLFUL VIOLATIONS OF THE TCPA,**  
15 **47 U.S.C. § 227 ET SEQ.**

16 44. As a result of Defendants' knowing and/or willful violations of 47  
17 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00  
18 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
19 227(b)(3)(C).

20 45. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting  
21 such conduct in the future.

22 46. Any other relief the Court may deem just and proper.

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**TRIAL BY JURY**

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully submitted this 27th day of August, 2019.

By: s/Cynthia Z. Levin  
Cynthia Z. Levin, Esq.  
Attorney for Plaintiff